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IN THE

Supreme Court of the United States

OCTOBER TERM, 1915.

No. 154.
No. 24,223.

JOHN D. FORD, APPELLANT,

vs.

THE UNITED STATES, APPELLEE.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE APPELLANT JOHN D. FORD.

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STATEMENT OF THE CASE.

This is an appeal from a judgment of the Court of Claims rendered May 4, 1914, sustaining a demurrer and dismissing the petition of the claimant, John D. Ford. The allegations contained in the appellant's petition to the Court of Claims are substantially as follows:

The appellant, John D. Ford, is a rear-admiral on the retired list of the United States Navy. On May 19, 1902, while a captain on the active list he was retired and advanced to his present grade of rear-admiral. At that time the act of June 7, 1900 (31 Stat. L., 703), was in force, which provided:

> "During a period of twelve years from the passage of this act any naval officer on the retired list

> may, in the discretion of the Secretary of the Navy, be ordered to such duty as he may be able to perform at sea or on shore, and while so employed shall receive the pay and allowances of an officer of the active list of the grade from which he was retired."

Pursuant to this act he was ordered to perform active duty by the Secretary of the Navy, and performed active duty as inspector of machinery and ordnance at Baltimore, Maryland, and other places, from May 19, 1902, to December 25, 1907; and during this period of active service he was paid the pay and allowances of a captain on the active list, that being the grade from which he was retired. Under the above act of 1900 the fact that he actually held the rank of rear-admiral, retired, did not in any way affect his rate of pay.

When the appellant was advanced to the grade of rear-admiral he did not actually receive a commission, for it was held at that time that they should only be given to officers on the active list. This was cured by the act of March 4, 1911 (36 Stat. L., 1354), under the provisions of which he was given a commission as tangible evidence of his grade as a rear-admiral on the retired list, to rank from May 19, 1902, the date of his advancement.

On March 4, 1913, the following law was enacted:

> "That all officers of the Navy who, since the third day of March, eighteen hundred and ninety-nine, have been advanced or may hereafter be advanced in grade or rank pursuant to law shall be allowed the pay and allowances of the higher grade or rank from the dates stated in their commissions" (37 Stat. L., 891).

The appellant contends that this act provided for the allowance to him of the pay and allowances of a rear-admiral, the grade to which he was advanced, from the date stated in his commission, May 19, 1902, and that

under said act he became and is now entitled to the difference between the pay and allowances of a captain, which he actually received, and those of a rear-admiral on the active list, for the period of his active duty, from May 19, 1902, to December 25, 1907, amounting to $5,500 to the best of appellant's knowledge and belief.

A demurrer was sustained and the petition dismissed by the Court of Claims. No opinion was filed.

Specification of Errors.

The appellant hereby assigns the following error in the proceedings and judgment of the Court of Claims:

1. The said court erred in finding for the appellee, in sustaining the demurrer, and in dismissing the petition of the appellant.

2. The said court erred in not finding that the appellant had a valid claim under the act of March 4, 1913 (37 Stat. L., 891), for the difference between the active pay and allowances of a rear-admiral and those of a captain in the United States Navy for the period from May 19, 1902, to December 25, 1907.

ARGUMENT.

INTRODUCTION.

This claim is founded on the act of March 4, 1913 (37 Stat. L., 891), which is as follows:

> "That all officers of the Navy who, since the third day of March, eighteen hundred and ninety-nine, have been advanced or may hereafter be advanced in grade or rank pursuant to law shall be allowed the pay and allowances of the higher grade or rank from the dates stated in their commissions."

The appellant is an officer of the Navy. He has been advanced in grade since March 3, 1899. He has not been allowed the pay and allowances of the higher grade from the date stated in his commission. He therefore claims such pay and allowances (those of rear-admiral), less the pay and allowances of his former lower grade, which he has actually received (those of captain).

We shall discuss the case under the following heads:

A. Affirmative Statement.

(1) The act of March 4, 1913, should be interpreted according to the usual meaning of its words.

(2) By the usual meaning of its words the appellant, John D. Ford, comes within its provisions and has a valid claim against the United States.

B. Reply to Points Raised by Appellee.

(1) The court should not go beyond the words of the statute to look for a more limited construction.

(2) The appellant's claim does not involve a repeal of the act of June 7, 1900 (31 Stat. L., 703).

(3) The act of August 22, 1912 (37 Stat. L., 328, 329), is not in point.

(4) The act of March 4, 1913, under which appellant claims, allows him active pay.

AFFIRMATIVE STATEMENT.

A. (1) The act of March 4, 1913 (37 Stat. L., 891), should be interpreted according to the usual meaning of its words.

The cardinal rule for interpretation of a statute is that it is to be construed to give the language its ordinary meaning and effect; and to ask the court to do otherwise is to ask it to asume legislative authority. Whether the statute is well advised is not the question. It is the plain

duty of the court to give it force and effect according to its natural meaning as drawn, without limitations or exceptions. In declining to go beyond the terms of statutes, this court has spoken as follows:

> "The popular or received import of words furnishes the general rule for the interpretation of public laws as well as of private and social transactions; and whenever the legislature adopts such language in order to define and promulge their action or their will, the just conclusion from such a course must be, that they not only themselves comprehended the meaning of the language they have selected, but have chosen it with reference to the known apprehension of those to whom the legislative language is addressed, and for whom it is designed to constitute a rule of conduct, namely, the community at large."
>
> Maillard *vs.* Lawrence, 16 Howard, 255, 261.

> "If the exemption had been intended it would doubtless have been expressed. There being no ambiguity, there is no room for construction. It would be out of place. The section must be held to mean what the language imports. When a statute is clear and imperative, reasoning *ab inconvenienti* is of no avail. It is the duty of courts to execute it. Further discussion of the subject is unnecessary. With them it would be like trying to prove a self-evident truth. The effort may confuse and obscure but can not enlighten. It never strengthens the pre-existing conviction."
>
> The Cherokee Tobacco, 11 Wallace, 616, 620.

> "Our duty is to read the statute according to the natural and obvious import of the language, without resorting to subtle and forced construction for the purpose of either limiting or extending its operations. Waller *vs.* Harris, 2 Wend. (N. Y.), 561; Pott *vs.* Arthur, 104 U. S., 735. When the language is plain, we have no right to insert words and phrases, so as to incorporate in the statute a new and distinct provision."
>
> United States *vs.* Temple, 105 U. S., 97, 99.

In the case of Knox County *vs.* Morton, 68 Fed., 787, 789; 15 C. C. A., 671, 673, construing a Missouri statute of limitation, the court said:

> "Attempted judicial construction of the unequivocal language of a statute serves only to create doubt and to confuse the judgment. Where the meaning of statutes is plain and clear on their face, arguments drawn from the history of the legislation and the possible motives or purposes of the legislation are entitled to very little consideration. They often serve rather to obscure than to elucidate the meaning of the laws, and where the signification of the language is certain the legislature must ordinarily be presumed to have meant what they have expressed."

And in Union Central Life Insurance Company *vs.* Champlin, 116 Fed., 858, 860; 54 C. C. A., 208, 210, the court said:

> "While ambiguous and doubtful expressions in legislative acts may and should be so interpreted by the courts as to carry out the intention of the body which enacted them when they fairly disclose that intention, yet it is the purpose which the act itself discloses, and that only, which may be thus enforced. The courts may not import into a plain and unambiguous law and give effect to a supposed intention or purpose of the legislative body which is neither expressed nor indicated in the act. Such a course of action would pass beyond the limits of construction or interpretation into the forbidden domain of judicial legislation."

A. (2) By the usual meaning of the words of the act of March 4, 1913 (37 Stat. L., 891), the appellant, John D. Ford, comes within its provisions and has a valid claim against the United States.

From May 19, 1902, to December 25, 1907, the appellant received the pay and allowances of a captain,

while on active duty and holding the rank of rear-admiral, retired. He contends that under the act of 1913, he became entitled to the pay and allowances of a rear-admiral for that period, and his suit is for the difference between the pay and allowances of a rear-admiral, which he has never received, and the pay and allowances of a captain, which have actually been paid him. Nothing can be more clear than that the appellant's case comes exactly within the terms of the act of 1913, which we shall consider phrase by phrase.

"*That all officers of the Navy.*" Retired officers are not excepted, and a retired officer is certainly an officer of the Navy, as was held in Franklin *vs.* U. S., 29 C. Cls., 6. See also Tyler *vs.* U. S., 16 C. Cls., 223, 105 U. S., 224; and Fowler *vs.* U. S., 31 C. Cls., 35, for analogous cases of officers of the Army. The appellant is a retired officer of the Navy.

"*Who have been advanced or may hereafter be advanced in grade or rank pursuant to law.*" "A grade is a step in a series, a rank" (Schuetze *vs.* U. S., 24 C. Cls., 229), such as from commander to captain to admiral. It has nothing to do with the question of active or retired service. The advancement in the case at bar was from captain to rear-admiral. The act of 1913 is by its express terms retroactive. This is not a case where an act is passed merely changing a rate of pay and a claim is made that it should relate back to a date prior to its passage. By the very terms of the act it applies to "*all officers . . . who . . . have been advanced,*" as well as to those who "*may hereafter be advanced.*" On May 19, 1902, the appellant was advanced in grade from captain to rear-admiral pursuant to law (the act of March 3, 1899, Sec. 11, 30 Stat. L., 1006).

"*Since the third day of March, 1899.*" It will be noted that March 3, 1899, was the date of the act known as the Navy Personnel Act, and it is by the provisions of Sec-

tions 8, 9 and 11 of this statute that officers were first advanced in grade at or after retirement; and to the best of counsel's knowledge there are no officers of the Navy with a retired grade higher than their last active grade who did not attain such higher grade since March 3, 1899. Thus the few officers who were promoted at or after retirement and who subsequently performed active service between 1900 and 1912 are enabled to come under the act of 1913, while the door is closed to possible claims arising from promotion from the beginning of the Navy to March 3, 1899, ancient claims which might be found perfectly legal had not this date of limitation been inserted. However, the appellant's advancement was on May 19, 1902, and he comes well within the limit. He has been advanced since the third day of March, 1899.

"*Shall be allowed the pay and allowances of the higher grade or rank.*" The higher grade to which the appellant was advanced was the grade of rear-admiral and the pay and allowances of that grade are the pay and allowances of a rear-admiral, as distinguished from the pay and allowances of the lower grade of captain, which the appellant actually received during the period in question.

"*From the dates stated in their commissions.*" This marks the time from which the advanced pay dates. Rear-Admiral Ford did not receive a new commission at the time of his advancement, but he later received one to date from May 19, 1902, and he was actually commissioned when the act of 1913 was passed. The date was May 19, 1902.

Thus the appellant comes exactly within the terms of the act of 1913, and he only wishes it to be interpreted according to the usual meaning of its terms as words of the English language. He contends that no exceptions should be read into it, and that no intention should be implied which can not be found in its wording. He seeks to have the statute enforced, and opposes any part of it being annulled.

(B) REPLY TO POINTS RAISED BY APPELLEE.

The Court of Claims gave no opinion with its judgment, and the appellant is at the disadvantage of not knowing which of the points raised by counsel for the United States influenced the court in its decision. We shall, therefore, consider them all briefly as argued in the court below.

B. (1) The court should not go beyond the words of the act of March 4, 1913 (37 Stat. L., 891), to look for a more limited construction.

It was urged by counsel for the United States that the true purpose of the act of 1913 was merely to relieve certain classes of officers, by giving them increased pay from earlier dates, and in the court below counsel called attention to a decision of the Comptroller of the Treasury, which purported to give a documentary history of the act to show that the intention was to provide only for ensigns and certain other grades. If this is so the law should have been more specific. When it appears on the statute books beginning with the words "All officers," we must assume that all officers were intended, not some officers to be ascertained by the Treasury Department. But assuming as a basis for the argument that when the act was passed it was expected that it would have the limited scope that the appellee contends, still if no such limited scope is found in its words and if in its literal meaning it is constitutional and reasonable the court can not go beyond the words of the statute to inquire whether Congress meant what it said.

We know of but two exceptions to the general rule that the court will not go outside the plain meaning of a statute to find material for restricting its scope and application, the first being when a statute is attacked as unconstitutional, and the second, where the application

of the statute, according to its strict terms, would operate in a way so manifestly unjust or grossly unreliable, and so opposed to our common conception of justice, as to provoke instant opposition. The reason for the exceptions is that the presumption is that the legislature has not passed an act it is forbidden to pass by the organic law, or that it has not intended a result concerning the unreasonableness or injustice of which there can be no dispute. In the case at bar there is no contention that the act of 1913 is unconstitutional, and we think it plain that there is nothing unjust or unreasonable in our construction of the act, which will allow the courts to go outside of the law's language to find its meaning.

Counsel for the United States asserted in the court below that the appellant Ford actually received $40 a year more in pay and allowances for his actual services, than he would have received in pay alone if he had been permitted to remain passive, and the contention is that because of this fact the claim is so unreasonable that a literal interpretation of the statute of 1913 could not have been intended. But the defendant does not take into consideration the fact that the five years during which Admiral Ford was continued in service after his retirement were taken from that period of his life when he was entitled, in fairness, and would have obtained but for the transient policy of the act of 1900, complete independence and immunity from enforced service. It also forgets that during those five years, he stood still so far as advancement was concerned, and that at the expiration of the service he was no better off on the retired list than if he had performed no active duty since the date of his retirement. In other words he received no advancement or longevity credit for his five years extraordinary service. And the defendant further overlooked the fact that, having reached retirement after the ordinary lifetime of service, the appellant was en-

titled, in fairness, to decide for himself whether he would wish to continue to engage actively in service, and that if he should so decide he was fairly entitled to choose the character of the service, and that it is unreasonable to suppose that he could not have commanded a greater remuneration for his services, than $40 a year, or that he would have given his services for that compensation. Admiral Ford may be looked upon as having been unfortunate to say the least, and surely the situation is of a character to preclude the conclusion that his claim is either unjust or unreasonable, or of a nature to warrant the court, in restricting, by implication, the meaning of a statute which by its terms clearly gives proper payment for his services.

B. (2) The appellant's claim does not involve a repeal of the act of June 7, 1900 (31 Stat. L., 703).

It was argued by counsel for the United States in the court below that the act of 1913 did not repeal the act of 1900, under which appellant's service was performed, and the case of Sears *vs.* U. S., 46 C. Cls., 105, was cited to show that there could be no such repeal. This is beside the point, however, for the appellant has never claimed that the act of 1900 was repealed.

In the Sears case, the claimant, a retired naval officer, had been assigned to active duty under the act of June 7, 1900. By the act of May 13, 1908 (35 Stat. L., 127), it was provided that:

> "The pay of all commissioned, warrant and appointed officers and enlisted men of the Navy now on the retired list shall be based on the pay, as herein provided for, of commissioned, warrant and appointed officers and enlisted men of corresponding rank and service on the active list."

It was contended that this act repealed the act of 1900 by implication, and that the claimant was entitled to active pay for active service performed after the date of

the act of 1908. The court dismissed the petition, stating the well-settled rule that repeals by implication are not favored, and that a later act of Congress, which is general in its terms and not expressly repealing a prior special act, will not affect the special provisions of the earlier act.

The case at bar is easily distinguishable from the Sears case, for in the case at bar the appellant seeks nothing by implication and does not claim that there has been any repeal of the act of 1900 by the act of 1913. The act of 1900 was limited by its own terms to twelve years, and had already expired before the act of 1913 was passed. Nor do we contend that the appellant was erroneously paid, for he was paid the active pay of the grade from which he was retired and this payment was exactly in accordance with the then existing act of 1900. But what we do believe is that the act of 1913, by its terms expressly retroactive, gave relief to officers who had not received the pay and allowances which they should justly have received, that under the act of 1900 a situation had existed for twelve years, which wronged the officers, in that an officer could be ordered to perform active luty in a certain grade, and would be paid therefor active pay, but not that of his grade at the time such active duty was performed, but that of a grade held by him formerly, before his retirement.

On March 3, 1913, this situation existed: Rear-Admiral Ford, an officer of the Navy, had since the third day of March, 1899 (viz., on May 19, 1902), been advanced in grade from captain to rear-admiral. From December 25, 1907, to date, he had been paid as rear-admiral, but from May 19, 1902, to December 25, 1907, he had been on active duty and had received active pay and allowances, but not those of the higher grade of rear-admiral, but of the lower grade of captain. On March 4, 1913, an act was passed which covered his

case exactly and provided that he should be allowed the pay and allowances of the higher grade, that of rear-admiral.

The claimant does not contend that the act of 1913 repealed the act of 1900 in any way, for the act of 1900 had already expired in 1912. The act of 1913 took an existing situation and provided that additional allowances should be made to certain officers, among them the claimant. There is no question of implication, and no question of repeal.

B. (3) The act of August 22, 1912 (37 Stat. L., 328, 329), is not in point.

The act of August 22, 1912 (37 Stat. L., 328, 329), is as follows:

> "Hereafter any naval officer on the retired list may, with his consent, in the discretion of the Secretary of the Navy, be ordered to such duty as he may be able to perform at sea or on shore, and while so employed in time of peace shall receive the pay and allowances of an officer of the active list of the same rank; *provided*, that no such retired officer so employed on active duty shall receive, in time of peace, any greater pay and allowances than the pay and allowances which are now or may hereafter be provided by law for a lieutenant, senior grade, on the active list of like length of service; *and provided further*, that any such officer whose retired pay exceeds the highest pay and allowances of the grade of lieutenant, senior grade, shall, while so employed in time of peace, receive his retired pay only, in lieu of all other pay and allowances."

It was urged by counsel for the United States that the act of 1900, under which the appellant performed his active service, was succeeded by this act of 1912, and that if the argument of the appellant were carried to its logical conclusion this act of 1912 would be repealed by implication by the act of 1913; that the existing act of 1912

could not have been repealed by implication by the act of 1913, and that therefore appellant's conclusion as to the effect of the act of 1913 on officers who had performed active duty under the act of 1900 is erroneous. But it will be seen that the act of 1912 has nothing to do with the case at bar, and in no way involves the claim of Rear-Admiral Ford.

It will be noted that the act of June 7, 1900, had expired of its own twelve-year limitation before this act of 1912 was passed and that appellant's active service, for which claim is made, was concluded December 25, 1907, before the passage of the act of 1912, which by its express terms ("*hereafter*") applies to subsequent service, so that the claim of the appellant does not rely upon the act of 1912 in any way. Moreover, this act of 1912 is essentially different from the act of 1900, in that service under the act of 1912 is voluntary "*with his consent*," instead of involuntary "*in the discretion of the Secretary of the Navy.*" The act of 1912 can only be said chronologically to be the successor of the act of 1900.

But whether or not the act of 1912 is the successor of the act of 1900, the appellant needs make no claim that the act of 1912 was repealed by the act of 1913. No retired officer on active duty under the act of 1912, coming within the language of the act of 1913 (assuming such a position possible, which we do not concede), can claim under the act of 1913, for the obvious reason that the act of 1913 does not repeal the act of 1912, and officers of the retired list on active duty under the act of 1912 are therefore not within the scope of the act of 1913. The appellant does not have to claim that the act of 1912 was repealed, and he does not claim that the act of 1912 was repealed. Nor was the act of 1900 repealed. The mistake of the defendant is in assuming that the act of 1900 was in existence when the act of 1913 was passed. When the act of 1913 was passed there was no act of

1900 then in effect to repeal. We insist that the act of 1913 confirmed every act done under the act of 1900, but, confronting conditions, the act of 1913 provided for the payment of additional compensation to that which had been paid under the act of 1900. This involves the repeal of neither act.

B. (4) The act of March 4, 1913, under which appellant claims, allows him active pay.

It was urged that the act of 1913 does not expressly provide that retired officers who have performed active duty and have received the active pay of the lower grade shall now be paid the *active* pay of the higher grade. This is true, but the acts of 1900 and 1913 together do so provide.

It is obvious that the act of 1913 says nothing about active or retired pay. The act does not attempt to recodify the Navy pay laws. It makes no change in the rates of regular pay, longevity pay, allowances, or the question of active or retired pay. It simply and clearly provides that certain officers promoted after March 3, 1899, shall be allowed the pay of the higher as distinguished from the lower grade.

Suppose the act of 1913 stood alone on the statute books. There would be no way to determine in dollars and cents what pay and allowances the officers were to get. We must turn to other statutes covering these subjects. We find that officers on the active list receive active pay, that most officers on the retired list receive retired pay, but that from 1900 to 1912 retired officers ordered to active duty received, not retired, but active pay. There is nothing in the act of 1913 to change this. The act of 1913 simply fixes the *grade* in accordance with which they shall be allowed *the pay and allowances to which they are otherwise entitled*, which, in the case of the appellant, is not retired pay but active pay under the

act of 1900. The act of 1900 provided that the appellant was to receive active pay and he did actually receive active pay thereunder. He was and is entitled to active pay.

There is nothing strained in thus construing together the acts of 1913 and 1900, for as a matter of fact, several other acts must be taken into consideration. The actual pay and allowances to be received by any officer, figured in dollars and cents, depends upon numerous laws, to which we must turn to find the actual pay of each grade, longevity pay, and allowances for a great variety of service. The act of 1910 only fixes the character of pay, whether active or retired, and for other determining elements we must look elsewhere. This can be done by the Treasury Department. Under the act of 1913 we are only concerned with the question of grade. The higher grade to which the appellant was advanced was the grade of rear-admiral, and the pay and allowances of that grade are the pay and allowances of a rear-admiral.

CONCLUSION.

Reviewing briefly it will be seen that the act of 1913 should be construed according to its terms with no unexpressed exceptions or implications, and that by the terms of the act of 1913 the appellant, an officer of the Navy, who, since March 3, 1899, has been advanced in grade pursuant to law, should be allowed the pay and allowances of the higher grade (rear-admiral), from the date stated in his commission, May 19, 1902, and having received the pay and allowances of the lower grade (captain) from May 19, 1902, to December 25, 1907, he has a valid claim against the United States for the difference in pay and allowances for that period.

The question presented to the court is simply this: Is Admiral Ford entitled to the difference between the pay of captain and rear-admiral for the time specified and

claimed? In determining this question there is but one method to pursue. That is the plain reading of language of the statute bearing on the case. The plain interpretation of that language, and not what the Government may wish to read into it, should prevail.

The act of March 4, 1913, reads:

> "That all officers of the Navy who, since the third day of March, eighteen hundred and ninety-nine, have been advanced or may hereafter be advanced in grade or rank pursuant to law shall be allowed the pay and allowances of the higher grade or rank from the dates stated in their commissions."

By inspection of Rear-Admiral Ford's commission it appears that he was made rear-admiral, to date from May 19, 1902. From that date, therefore, under the plain language of the act he was and is entitled to receive the pay of that rank, namely, that of rear-admiral. There is no ambiguity in the act and there is no reason for the court to seek to find such. If any presumption is to be drawn, it is that Congress intended to reward this officer for the work he had done.

The appellant therefore prays that the judgment of the Court of Claims, sustaining the demurrer and dismissing the petition, be reversed, and the case remanded with instructions to enter judgment for the appellant after ascertainment by the Treasury Department of the exact amount due.

Respectfully submitted.

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